United States Department of Labor
Employees' Compensation Appeals Board

ROBERT L. JOHNSON, Appellant	)	
and	)	**Docket No. 04-1380**
	)	**Issued: October 19, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Portland, ME, Employer	)	

Appearances:
Robert L. Johnson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 29, 2004 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated April 14, 2004 in which the Office denied modification of a November 17, 2003 decision which granted appellant a schedule award for a 12 percent permanent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision in this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he has greater than a 12 percent permanent impairment of the right upper extremity for which he received a schedule award. On appeal appellant generally contends that his pain should entitle him to an increased award.

FACTUAL HISTORY

On December 5, 1996 appellant, then a 50-year-old letter carrier, filed a Form CA-2, occupational disease claim, alleging that factors of his employment caused a right arm, hand and

wrist injury. On February 12, 1997 appellant filed an occupational disease claim for a left arm, hand and wrist injury. Under claim No. 01-0345191, the Office accepted that appellant sustained right wrist/arm tendinitis, right medial epicondylitis and bilateral wrist tendinitis, and under claim No. 01-0347002 accepted left flexor tendinitis, right lateral epicondylitis, bilateral ulnar neuropathy and bilateral submuscular nerve transposition.[1] On April 29, 1998 he underwent left medial epicondylectomy and ulnar nerve transposition.

On October 5, 1998 appellant filed a schedule award claim under No. 01-0347002, and on June 8, 2000 under No. 01-0345191. In a decision dated August 29, 2000, appellant was granted a schedule award for a 50 percent impairment of the left upper extremity, with compensation running from August 13, 2000 to June 1, 2003.

The Office continued to develop the claim for entitlement to a schedule award for appellant's right upper extremity. In a report dated October 6, 2000, Dr. Vincent P. Herzog, appellant's attending Board-certified physiatrist, evaluated appellant's right upper extremity and noted a chief complaint of chronic pain. Physical examination findings included right grip strength of 40 pounds with a dynamometer setting of two and a positive Tinel's at the right elbow and wrist. He noted "bitter" complaints of pain on palpation throughout soft tissues at the biceps and triceps but mostly at the epicondyle regions and advised that light touch near the ulnar nerve caused paresthesias radiating into the hand with diminished pinprick in the right ulnar distribution. Right elbow flexion and extension were minus five degrees each. Dr. Herzog's impression was severe cumulative trauma disorder and right ulnar neuropathy with positive electromyography (EMG). He stated that maximum medical improvement had been reached in 1998, and referenced the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[2] advising that appellant had a moderately severe ulnar neuropathy on the left which rendered a 30 percent left upper extremity impairment. He then stated, "utilizing Table 3 on page 20, the right side renders 18 [percent] whole person permanent impairment. Utilizing the Combined Values Chart 30 [percent] for the left arm and 18 [percent] at the right arm renders 43 [percent] whole person permanent impairment with regard to both upper extremities."

Following an Office request, in a report dated January 14, 2001, an Office medical adviser noted his review of Dr. Herzog's October 6, 2000 report and opined that maximum medical improvement had been reached on March 23, 1998. He advised that under the fourth edition of the A.M.A., *Guides* appellant had a 12 percent impairment of the right upper extremity. The Office medical adviser stated that he disagreed with Dr. Herzog's determination that appellant's right ulnar entrapment neuropathy was moderately severe and based his analysis on a 1997 EMG which demonstrated mild ulnar neuropathy. He noted that Table 16 of the A.M.A., *Guides* this would entitle appellant to a 10 percent permanent impairment. The Office medical adviser then found that, under Figure 32, appellant would be entitled to an additional two percent impairment for diminished elbow flexion and extension. He advised that, as no

[1] Appellant also has an accepted low back strain, adjudicated under No. 01-0351375, and right shoulder strain, adjudicated under No. 01-0217915. He filed a schedule award for the former. The record does not indicate that the Office has issued a final decision regarding this schedule award claim.

[2] A.M.A., *Guides* (4th ed. 1993).

atrophy was present, appellant's grip strength was diminished by pain secondary to ulnar neuropathy and concluded that appellant had a total impairment of 12 percent of the right upper extremity. Appellant retired on May 14, 2001.

In a decision dated November 17, 2003, appellant was granted a schedule award for a 12 percent impairment of the right upper extremity, for a total of 37.44 weeks of compensation, to run from April 11 to December 29, 1998.

On January 16, 2004 appellant requested reconsideration, stating that he had extreme pain and submitted a January 6, 2004 report in which Dr. Herzog noted appellant's report that activities of daily living "can stir up complaints." On physical examination, Tinel's and Phalen's maneuvers were positive on the right with excellent strength. He noted appellant's bitter complaints of discomfort, even with light touch to the flexor extensor of the forearm and epicondyles and in a global distribution of the wrist. Sensation was intact to touch, reflexes 2/4, and Spurling's and impingement tests were negative. Dr. Herzog advised that EMG findings consistent with moderate right-sided carpal tunnel syndrome/median mononeuropathy at the wrist with no acute radiculopathy and chronic occupational right arm discomfort due to cumulative trauma disorder, tendinitis, epicondylitis, etc.

By report dated March 6, 2004, an Office medical adviser reviewed Dr. Herzog's January 6, 2004 report and noted that he no longer found evidence of right ulnar neuropathy. The Office medical adviser further stated that, as carpal tunnel syndrome had not been accepted as employment related, appellant was not entitled to an increased schedule award. In a decision dated April 14, 2004, the Office denied modification of the prior decision.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[3] and section 10.404 of the implementing federal regulations,[4] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*[5] has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[6]

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] A.M.A., *Guides*, *supra* note 2.

[6] *See Joseph Lawrence, Jr.*, 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002); *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

ANALYSIS

Appellant received a schedule award for a 12 percent permanent impairment of the right upper extremity, and the Board finds that he is not entitled to an increased award. In his report dated October 6, 2000, Dr. Herzog, appellant's attending physiatrist, noted that right elbow flexion and extension were minus five degrees. In his December 28, 2000 report, the Office medical adviser properly determined that, under Figure 32 of the A.M.A., *Guides*,[7] appellant would be entitled to a one percent impairment each for decreased flexion and extension at the elbow, to total a two percent impairment for lack of range of motion. While Dr. Herzog concluded that appellant was entitled to a 30 percent impairment, it cannot be determined how he reached this conclusion. In his October 6, 2000 report, he stated that appellant had a severe ulnar neuropathy on the *left* and explained that he used Table 3 and the Combined Values Chart of the A.M.A., *Guides* to reach his conclusion. (Emphasis added.) An Office medical adviser reviewed Dr. Herzog's report and concluded that, based on a 1997 EMG, appellant had mild ulnar neuropathy on the right which would entitle him to a 10 percent impairment, in addition to the 2 percent for decreased range of motion.

The Board notes that the record contains a report dated May 9, 1997 in which Dr. Herzog detailed EMG findings that demonstrated borderline ulnar neuropathy on the right. In a December 23, 1997 report, he noted EMG findings of bilateral ulnar neuropathy but did not grade their severity. As properly determined by the Office medical adviser, Table 16 of the A.M.A., *Guides*, provides that mild ulnar entrapment at the elbow provides a 10 percent impairment.[8] The Board finds that, as Dr. Herzog's October 6, 2000 report is confusing such that it cannot be determined as to how he reached his impairment rating, especially since he did not reference Table 16, his report is of decreased probative value.[9] The Office medical adviser properly evaluated appellant's right upper extremity in accordance with the A.M.A., *Guides* in finding that appellant had a 12 percent permanent impairment of the right upper extremity.

Appellant also submitted a January 6, 2004 report in which Dr. Herzog diagnosed right-sided carpal tunnel syndrome/median neuropathy at the wrist. Right wrist tendinitis has been accepted as employment related but, as noted by the Office medical adviser in his March 6, 2004 report, carpal tunnel syndrome has not. At the time appellant requested reconsideration in January 2004, the fifth edition of the A.M.A., *Guides* had been adopted by the Office for evaluating schedule award claims,[10] and Chapter 16 provides the framework for assessing upper extremity impairments.[11] In his January 6, 2004 report, however, Dr. Herzog provided no findings, such as abnormal range of motion measurements, that would entitle appellant to an increased schedule award for an accepted condition.

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[7] A.M.A., *Guides*, *supra* note 2 at 40.

[8] *Id.* at 57.

[9] *See Mary L. Henninger*, 52 ECAB 408 (2001).

[10] A.M.A., *Guides* (5th ed. 2001); FECA Bulletin No. 01-05 (issued January 29, 2001); *Joseph Lawrence, Jr.*, *supra* note 6.

[11] A.M.A., *Guides*, *supra* note 10 at 433-521.

The Board therefore finds that as Dr. Herzog's January 6, 2004 report does not provide findings that would entitle appellant to a greater award and, in his January 14, 2001 report, the Office medical adviser provided a basis for his impairment rating and referenced the specific figures and tables in the A.M.A., *Guides* on which he relied, his report established that appellant was entitled a schedule award for his right upper extremity of 12 percent.[12]

Regarding appellant's contention on appeal that he is entitled to a greater award due to pain, although the standards for evaluating the permanent impairment of an extremity under the A.M.A., *Guides* are based primarily on loss of range of motion, all factors that prevent a limb from functioning normally, including pain and loss of strength, should be considered, together with loss of motion, in evaluating the degree of permanent impairment.[13] Chapter 18 of the fifth edition of the A.M.A., *Guides* provides the framework for assessing pain,[14] and section 18.3b states that pain-related impairment should not be used if the condition can be adequately rated under another section of the A.M.A., *Guides*. Office procedures provide that, if the conventional impairment adequately encompasses the burden produced by pain, the formal impairment rating is determined by the appropriate section of the A.M.A., *Guides*. However, an impairment rating can, in some situations, be increased by up to three percent if pain increases the burden of the employee's condition.[15]

The record in this case contains reports dated June 5 and 19 and September 18, 2000 and March 13, 2001 in which Dr. Herzog diagnosed chronic pain and, in reports dated December 2, 1999 and June 1, 2000, Dr. John T. Chance, a Board-certified orthopedic surgeon, who performed appellant's surgery in 1998, also diagnosed chronic bilateral upper extremity pain. The physicians, however, did not provide a basis for finding an impairment for pain or reference specific tables in the A.M.A., *Guides*. Thus, their reports are of decreased probative value and insufficient to establish that appellant is entitled to an increased award due to pain.[16]

Lastly, the Board notes that appellant retains the right to file a claim for an increased schedule award based on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated.[17]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he has greater than a 12 percent permanent impairment of the right upper extremity.

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[12] *Id.*

[13] *Janet L. Adamson*, 52 ECAB 431 (2001).

[14] A.M.A., *Guides*, *supra* note 10 at 565-91.

[15] *Richard B. Myles*, 54 ECAB ____ (Docket No. 02-1663, issued January 24, 2003).

[16] *See Mary L. Henninger*, *supra* note 9.

[17] *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 14, 2004 and November 17, 2003 be affirmed.

Issued: October 19, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member